

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

Darrell Jeffery Fortune,

Plaintiff,

vs.

Gaylor Electric, Inc. and Justin Baker,

Defendants.

Civil Action No. 3:19-cv-684

NOTICE OF REMOVAL

By this Notice of Removal, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendant Gaylor Electric, Inc. (hereinafter “Defendant Gaylor”), through its undersigned attorneys, hereby removes this civil action from the General Court of Justice, Superior Court Division, Burke County, North Carolina (the “Superior Court”), to the United States District Court for the Western District of North Carolina, Asheville Division. Defendant Gaylor states the following grounds for removal:

I. INTRODUCTION

1. On September 18, 2019, Plaintiff Darrell Jeffery Fortune (“Plaintiff”) commenced this action by filing a Complaint in the Superior Court, Case No. 19-CVS-1276 (“Complaint”). A true and accurate copy of the Complaint is attached hereto as Exhibit A.

2. On November 15, 2019, Defendant Gaylor was served with a copy of the Complaint and Summons. True and accurate copies of the Complaint and Summons served upon Defendant Gaylor are attached hereto as Exhibits A and B, respectively.

3. Defendant Justin Baker has not yet been properly served with a copy of the Summons and Complaint pursuant to Rule 4(j)(1) of the North Carolina Rules of Civil Procedure, and therefore, he is not a needed party to this action or removal.

4. The Complaint and the Summons attached as Exhibits A and B constitute all of the process, pleadings, and orders served upon Defendant Gaylor in this action. Defendant Gaylor has filed no pleadings in the Superior Court in this action.

II. JURISDICTION AND VENUE

5. Venue is proper in the United States District Court for the Western District of North Carolina, Asheville Division, as this case was originally filed in Burke County, North Carolina. *See* 28 U.S.C. § 1446(a).

6. This Court has subject matter jurisdiction in this case based upon federal question jurisdiction because Plaintiff's Complaint alleges violations of the Fair Labor Standards Act ("FLSA") 29 U.S.C. § 203, et seq. and the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, et seq. This Court has original federal question jurisdiction over these claims because they are based on a federal statute. *See* 28 U.S.C. § 1331.

III. PROCEDURAL REQUIREMENTS

7. This Notice of Removal has been timely filed within thirty (30) days of Defendant Gaylor's receipt of the Complaint as required by 28 U.S.C. § 1446(b).

8. In accordance with 28 U.S.C. § 1446(d), a copy of this Notice will be filed with the Clerk of the Superior Court and served upon all adverse parties promptly after the filing of the original Notice of Removal in this action. A copy of this Notice is attached hereto as Exhibit C.

IV. CONCLUSION

WHEREFORE, having fulfilled all statutory requirements, Defendant Gaylor hereby removes this action from the General Court of Justice, Superior Court Division, Burke County, North Carolina, to this Court, and requests that this Court assume full jurisdiction over this matter as provided by law.

Dated: December 13, 2019

/s/ Stephen Dellinger

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*Attorneys for Defendant Gaylor Electric, Inc.
LLC*

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF REMOVAL has been filed with the Clerk of the Court using the CM/ECF system and served upon the following counsel of record by placing the same in the United States mail, certified mail, return receipt requested, addressed to the following as shown below this 13th day of December, 2019.

Glen C. Shults
Law Offices of Glen C. Schults
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/s/ Stephen Dellinger

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